

IN THE
Supreme Court of the United States
SPRING TERM, 1974

No. 72-1490

FEDERAL POWER COMMISSION, *Petitioner*,

v.

TEXACO, INC., *Respondent*

No. 72-1491

DUDLEY T. DOUGHERTY, ET AL., CO.
EXECUTORS OF THE ESTATE OF MRS. JAMES R.
DOUGHERTY, ET AL., *Petitioner*,

v.

TEXACO, INC., ET AL., *Respondent*.

On Writ of Certiorari to the United States Court of Appeals
for the District of Columbia

**MOTION FOR LEAVE TO FILE BRIEF AMICUS
CURIAE ON BEHALF OF THE INDEPENDENT
PETROLEUM ASSOCIATION OF AMERICA**

INTEREST OF AMICUS CURIAE

The Independent Petroleum Association of America (IPAA) would respectfully show the following to demonstrate its interest in this case:

I.

The Independent Petroleum Association of America (IPAA) is a non-profit organization, incorporated

under the laws of the State of Oklahoma and is a national trade association representing approximately 4,000 independent oil and natural gas producers in every producing region of the United States. A large portion of its membership which produce natural gas falls within the "small producer exemption."¹

II.

IPAA and its members have a substantial interest in the matters under consideration in the above-captioned cases. The determination of the issues presented herein could very materially affect the substantive rights of the membership of IPAA.

III.

IPAA took an active part in the Permian Basin Area Rate case, 34 FPC 159 (1965) the Initial Natural Gas Area Rate Proceeding, on behalf of its membership. However, as an Association, it did not have available individual company costs and other material which were required in this proceeding. IPAA cooperated with the Staff of the Federal Power Commission in an attempt to obtain meaningful information from the small producers segment of the industry.

The Commission recognized early in this initial area rate proceeding covering the Permian Basin that the methodology being pursued therein with respect to and based upon over-all industry questionnaires, etc., could not realistically apply to small producers of natural gas for various reasons. Thus the Commission set

¹ "Small producers" are defined by the Federal Power Commission as those whose jurisdictional sales of natural gas do not exceed 10,000,000 Mcf annually.

about to exempt them from the questionnaire and other requirements being made of the larger producers.

In due course, the Commission concluded (34 FPC at pages 234-5) that it was in the public interest to accord special treatment to small producers which would ease the burdens of regulations without the risk of substantial impact on consumer prices.

Accordingly, in establishing just and reasonable rates for all producers in the Permian Basin Area, the Commission issued Order 308 on October 29, 1965, 34 FPC, 1202, which relieved small producers from almost all of the administrative burdens and expenses concerning the rate and certificate provisions of the Natural Gas Act. The small producer certificates were authorized for any producer with jurisdictional sales of less than 10,000,000 Mcf per year subject to contract rates not in excess of the established ceilings in the pertinent area. The Supreme Court affirmed this action by the Commission in the Permian Basin Cases, 390 U.S. 747, 787 (1968).

Subsequently, on July 23, 1970, the Federal Power Commission issued a Notice of Proposed Rulemaking, Docket No. R-393, "proposing prospectively to exempt from regulation under the Natural Gas Act all existing and all future jurisdictional sales made by small producers, i.e. jurisdictional sales which do not exceed 10,000,000 Mcf in a calendar year."

IPAA filed with the Commission its comments in support of this proposed Rulemaking and also took an active role in support thereof at an informal conference held on December 8, 1970, between the Commission Staff and interested parties.

In addition, the IPAA, participated as an Amicus Curiae in the proceeding below.

These cases are before this court by reason of the Petitioners hereto contending, in general, that Federal Power Commission Order No. 428, which exempts small producers of natural gas from direct FPC regulation, is lawful under the Natural Gas Act.

IPAA supports the action of the Federal Power Commission in issuing Order No. 428, issued March 18, 1971, and Order No. 428-B entitled "Order Modifying Order No. 428 and Denying Applications For Rehearing," issued July 15, 1971.

IPAA submits that these orders are vital to small producers of natural gas, and are in the public interest.

Further, IPAA submits that these orders are *legal* and are based on adequate findings pursuant to the notice of proposed rulemaking issued by the Federal Power Commission in accordance with all procedural requirements as prescribed in Section 553, Title 5, of the United States Code.

Wherefore, for the foregoing reasons, IPAA respectfully moves for leave to file a Brief Amicus Curiae in these cases, and for all other proper relief in the premises.

Respectfully submitted,

INDEPENDENT PETROLEUM ASSOCIATION OF AMERICA

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Dated at Washington D.C.
November 23, 1973

